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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,741	10/10/2006	Amos Valinsky	3017-004P/JAB	5421
140	7590	09/29/2009		
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER	
			GORDON, BRIAN R	
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
09/29/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[nyuspactions@ladas.com](mailto:nyuspactions@ladas.com)

<b>Office Action Summary</b>	<b>Application No.</b> 10/556,741	<b>Applicant(s)</b> VALINSKY, AMOS
	<b>Examiner</b> Brian R. Gordon	<b>Art Unit</b> 1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 November 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 November 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-146/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the diameter" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 11-13 are improper claims that reference the figures. The claims do not add any further structure to that of claims 1 or 2.

Claim 14 is not further limiting of the structure of claim. The invention is defined by the elements listed after the transitional phrase. Here there is no additional structure claimed relative to that of claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1 and 5-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Astle US 5,789,251.

Astle discloses a multi-well plate including an aluminum foil which is placed over the top of the plate. This satisfactorily seals the plate, but a relatively high degree of force is required to puncture the foil with pipette tips to simultaneously access all 96 wells and the foil.

As seen in figure 3, the foil includes slits and perforations that indicate the position of the wells.

A pipette is used to access the wells to withdraw from or dispensing fluid to the wells. (abstract).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Astle as applied to claims 1 and 5-25 above, and further in view of Tyndorf et al., US 2003/0077207.

Astle does not disclose a frame.

Tyndorf et al. disclose a closed system storage plate that includes a specimen collection plate having a plurality of wells arranged in a geometrical pattern and a cover that is securely sealed to it. Each well includes an open end, a closed end and a cylindrical wall therebetween that defines the interior of the well. The cover includes a thermoplastic elastomer material, which is capable of being pierced and self-resealing on a repetitive basis upon removal of the piercing device such as a pipette, cannula, or an instrument probe. The closed system storage plates permit specimens in each well to be dispensed or accessed without removing the cover from the specimen collection plate. (paragraph 0023).

The cover 4a also includes a structure to support the thermoplastic elastomer membrane 12a and to provide rigidity. The structure may include a frame around the perimeter of the cover 4a and/or ribs extending along the length and/or width of the cover 4a. The support structure is preferably a hard plastic but other materials known in the art can be used. (paragraph 0034).

As seen in Figure 5, the cover includes a plurality of indented areas corresponding to the wells (indicia/signs of the location of the wells).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Astle to include a frame as taught by Tyndorf to provide rigidity and support to the foil of Astle.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. MacBeath, Gavin et al.; Korpela, Matti; Viola; Jean-Pascal et al.; Razavi; Ali; Razavi; Ali et al.; Portmann; Rudolf et al.; Hiroshi; Tamura et al.; Horn; Anton et al.; Davies; Douglas et al.; Tajima; Hideji; and Seguin; Daniel J. et al. discloses plates with penetrable covers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/  
Primary Examiner  
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